

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE  
May 12, 2009 Session

**THOMAS REED v. STATE OF TENNESSEE**

**Appeal from the Circuit Court for Cannon County**  
**Nos. F05-21 and F05-69     James K. Clayton, Jr., Judge**

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**No. M2008-02126-CCA-R3-HC - Filed June 25, 2009**

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The Petitioner, Thomas Reed, appeals the Cannon County Circuit Court's summary dismissal of his petition for habeas corpus relief. The habeas corpus court dismissed the petition because it was filed in the convicting court rather than in a court in the county of his incarceration. In his petition, he argued that he was unlawfully restrained of his liberty because he had not been furloughed as ordered by the trial court. On appeal, the Petitioner argues that the dismissal is erroneous because he stated a sufficient reason for filing in the convicting court. We conclude that the habeas corpus court did have the authority to consider the petition. Nonetheless, the dismissal is affirmed because the Petitioner has failed to state a cognizable claim for habeas corpus relief.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

DAVID H. WELLES, J., delivered the opinion of the court, in which ALAN E. GLENN and ROBERT W. WEDEMEYER, JJ., joined.

Kenneth R. McKnight, Assistant Public Defender, Murfreesboro, Tennessee, for the appellant, Thomas Reed.

Robert E. Cooper, Jr., Attorney General and Reporter; Lacy Wilber, Assistant Attorney General; William Whitesell, District Attorney General; and David L. Puckett, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

**Factual Background**

On March 11, 2005, the Petitioner, in Cannon County Case F05-21, pleaded guilty to attempted burglary, theft, and leaving the scene of a property accident. He received an effective two-

year sentence for these convictions, to be served on probation.<sup>1</sup> In Cannon County Case F05-69, the Petitioner entered pleas of guilty, on December 9, 2005, to theft under \$500 and theft over \$1,000. He received an effective three-year sentence for these convictions, which sentence was to be served consecutively to the sentence in Case F05-21.

On February 24, 2006, the trial court, in Case F05-21, agreed to furlough the Petitioner to Hope Center's Lazarus Program for substance abuse treatment when a bed became available. The order provided that, upon completion of the program, the Petitioner was to contact the Cannon County Sheriff's Department for transportation back to the Cannon County Jail. On February 9, 2007, another<sup>2</sup> agreed order to furlough the Petitioner was entered in both cases, F05-21 and F05-69.<sup>3</sup> The Petitioner was to be furloughed to "A Friend of Bill's" rehabilitation program when a bed became available. Again, the order provided that, upon completion of the program, the Petitioner was to contact the Cannon County Sheriff's Department for transportation back to jail.

On March 9, 2008, the Petitioner sent a letter asserting that he could not receive his furlough while in the Department of Correction and that he therefore needed to be transferred back to the Cannon County Jail. There is a handwritten notation affixed to this letter and signed with the initials KG: "We no longer have jurisdiction of your case. Once you go to TDOC, we cannot accept any motions for susp. sentence, etc. per Judge and District Attorney."

The Petitioner then sent a letter on May 16, 2008, stating that he was "putting a petition together for a writ of habeas corpus." The Petitioner asserted that he needed a copy of his sentencing transcript to keep his petition from being denied. On May 19, 2008, he filed, in the Cannon County Circuit Court, a pro se motion to obtain his plea transcript at the State's cost. The court treated this letter as a petition for a writ of habeas corpus and appointed counsel.

On August 12, 2008, an amended petition for habeas corpus relief was filed. The Petitioner alleged that he was being illegally restrained of his liberty "by virtue of once again being transferred to the physical custody of the Tennessee Department of Corrections, in violation of the . . . agreed order(s)." He claimed that this unlawful detention rendered his convictions void and that they should be set aside. The Petitioner, citing to Davis v. State, 261 S.W.3d 16 (Tenn. Crim. App. 2008), stated that he was filing the petition in Canon County because "the court possesses relevant records and retains the authority to correct the sentence at anytime . . . ."

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<sup>1</sup> The record does not reflect whether the Petitioner's probation was subsequently revoked.

<sup>2</sup> The Petitioner sent two letters to the Cannon County Circuit Court (filed on May 24, 2006, and September 22, 2006) seeking to get on the court docket about sentencing issues. According to the Petitioner, these letters were treated as a request for post-conviction relief, and the court granted relief resulting in this second furlough order.

<sup>3</sup> The order contains a handwritten notation that the Petitioner was in the custody of the Department of Correction rather than the Cannon County Jail.

A hearing was held on August 29, 2008. At the outset of the hearing, the State contended that the petition should have been filed in Lake County, where the Petitioner is incarcerated. The habeas corpus court agreed, stating, “I don’t have any jurisdiction over it at all if he’s in TDOC.” The court instructed the Petitioner to file his petition in Lake County. Petitioner’s counsel noted an exception to the court’s ruling, contending that Cannon County is “the proper venue, because this is the trial court and it maintains the records.” An order was entered on this same date, wherein the habeas corpus court dismissed the petition: “After reviewing said Petition, the Court finds that it does not have the authority to consider it based upon the fact that [the Petitioner] is incarcerated in the Northwest Correctional Complex in Tiptonville, Tennessee, a location which is not within this Court’s jurisdiction.” This appeal followed.

### **Analysis**

First, we must address whether the petition was properly filed in Cannon County, where the Petitioner was convicted, rather than in Lake County, where he is incarcerated. An application for habeas corpus relief should be filed in the court “most convenient in point of distance to the applicant, unless a sufficient reason be given in the petition” for not applying to that court. Tenn. Code Ann. § 29-21-105. The reason proffered by the Petitioner was that the Cannon County Circuit Court possesses the relevant records regarding his allegedly illegal sentence and retains the authority to correct his sentence at any time and, therefore, it is an appropriate court in which to file his habeas corpus action. This is a sufficient reason, and the habeas corpus court had the authority to consider the merits of the petition. See Davis v. State, 261 S.W.3d 16, 22 (Tenn. Crim. App. 2008).

Notwithstanding, the petition fails to state a cognizable claim for habeas corpus relief. The determination of whether to grant habeas corpus relief is a question of law, and our review is de novo. See Summers v. State, 212 S.W.3d 251, 262 (Tenn. 2007). The Tennessee Constitution guarantees a convicted criminal defendant the right to seek habeas corpus relief. See Tenn. Const. art. I, § 15. However, the grounds upon which habeas corpus relief will be granted are very narrow. Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). A petition for habeas corpus relief may only be granted when the judgment is shown to be void, rather than merely voidable. Id. A judgment is void only when it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered that the convicting court was without jurisdiction or authority to sentence a defendant or that a defendant’s sentence has expired. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993).

A sentence imposed in direct contravention of a statute is illegal and thus void. Stephenson v. Carlton, 28 S.W.3d 910, 911 (Tenn. 2000). On the other hand, a voidable judgment or sentence is one which is facially valid and which requires evidence beyond the face of the judgment or the record of the proceedings to establish its invalidity. Taylor, 995 S.W.2d at 83. A petitioner bears the burden of establishing a void judgment or illegal confinement by a preponderance of the evidence. Hogan v. Mills, 168 S.W.3d 753, 755 (Tenn. 2005). Moreover, it is permissible for a court to summarily dismiss a habeas corpus petition, without the appointment of counsel and without an evidentiary hearing, if there is nothing on the face of the record or judgment to indicate that the

convictions or sentences addressed therein are void. Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994).

Here, the Petitioner argues that he is being illegally restrained in violation of the agreed furlough order, rendering his convictions void. Any violations of the agreed furlough orders do not render the judgments of convictions void.<sup>4</sup> The Petitioner cited to no authority in his petition, and we know of none, that entitles him to habeas corpus relief. The Petitioner's sentences were not imposed in direct contravention of a statute. The judgments of convictions are facially valid.

The Petitioner's lawful sentence has not expired, and the sentencing court had jurisdiction and authority to enter the judgments against him. Because the petition did not state a cognizable claim for habeas corpus relief, summary dismissal was proper.

### **Conclusion**

Based upon the foregoing reasoning and authorities, we affirm summary dismissal of the petition.

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DAVID H. WELLES, JUDGE

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<sup>4</sup> We note that misdemeanants are eligible for furlough following service of a percentage of their sentences. Tenn. Code Ann. 40-35-302(d). When a defendant has been sentenced to a local jail or workhouse, the sentencing court shall have jurisdiction to grant a furlough for the reasons provided in Tennessee Code Annotated section 40-35-316. Moreover, the Department of Correction is authorized and empowered to grant furloughs pursuant to Tennessee Code Annotated section 41-21-227.